IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 578 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESH @ GHETI MAGAN RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 578 of 1994
MR DEEPAK M SHAH for Petitioner No. 1
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/02/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. Appellant, by filing this appeal under Section 374(2) of the Code of Criminal Procedure, has challenged the judgment and order dated March 29, 1994, passed by the learned Additional Sessions Judge, Surat, in Sessions Case No. 102 of 1992, by which the appellant has been convicted under Section 302 read with Section 34 of the Indian Penal Code, and sentenced to undergo R.I. for life and fine of Rs.5000 in default R.I. for one year. It was directed that, if the fine is paid, the same be paid to Meenaben Vinodchandra, widow of deceased Vinodchandra Alias Pappu Jaisinh Rajput.

2. The prosecution case, in a nut-shell, is as under: Vinodchandra Alias Pappu Jaisinh Rajput [hereinafter referred to as 'deceased'] and his wife, Meenaben, were social workers and Office Bearers of an Organization called Dalit-Muslim Laghugmati Sureksha Maha Sangh in the District of Valsad. On February 5, 1992, the above Maha Sangh had called a token hunger strike against the rise in price. The deceased and his wife, Meenaben, had handed over a written memorandum to the District Collector. On the day of the incident, i.e. on February 7, 1992, the deceased and his wife, Meenaben, had decided to go to Surat to hand over copies of the memorandum to the President of Mahasangh, Mahemudbhai Pardewala and to give the memorendum to the daily newspaper 'Gujarat Mitra' for publication. The deceased had requested his friend Vijaybhai, who was owning Maruti Van No. GBQ 888 to accompany him and his wife to Surat for the above purpose. The deceased and his wife, Meenaben, along with his friend, Vijaybhai, had started to go to Surat at 12.30 hrs. on February 7, 1992. They had reached Surat around 2.15 p.m. When the Maruti Van was proceeding on the Ring Road, Surat, the deceased requested Vijaybhai to stop the Maruti Van near Gajjar Chamber, Falsawadi, Accordingly, Vijaybhai had stopped his Maruti Van and got down from the Maruti Van to buy a cigarette. The deceased also got down from the Maruti Van and was standing on the side of the road. In the meantime, the appellant, who was carrying a sword, and the absconding accused, Dilip Bambaiya, who was also carrying a sword, had rushed towards the deceased to launch a murderous assault. The said two persons had come from the adjoining hutments situated near the road having swords in their hands and rushed towards the deceased to launch a murderous assault. The appellant and the said Dilip Bambaiya were known to Meenaben as they were bootleggers. As per the say of the

complainant, Meenaben, the appellant had inflicted forceful blows by sword on the waist of the deceased whereas the absconding accused, Dilip Bambaiya, had inflicted blows with sword, which he was carrying, on the leg of the deceased. Meenaben, due to fear, had come out of the Maruti Van and had run towards Vakharia Mill where she had hidden herself. The driver of the Maruti Van, Vijaybhai, had run towards the Office of Mahemudbhai Pardewala to inform about the assault launched on the deceased. As per the prosecution case, the appellant and the absconding accused, Dilip Bambaiya, had run after the deceased by wielding the swords. In the meantime, Meenaben had come out from the compound of Vakharia Mill and had seen the appellant and the absconding accused, Dilip Bambaiya, inflicting successive sword blows on her husband. Meenaben had run towards the office of Mahemudbhai Pardewala. In the said office, one Rafikbhai had informed Meenaben that, at the request of Vijaybhai, who was the driver of Maruti Van, he had already informed the concerned Police Station about the incident. The telephonic information conveyed by Rafikbhai was received by Mahidharpura Police Station at 14.20 hrs. P.I. M.G. Kaneria, who was, at the relevant time, in-charge Police Inspector of the police station had, immediately on receiving the telephonic message, reached the place of incident situated near Javed Auto Garage, Opposite Gajjar Chambers, Ring Road, Surat. P.I. M.G. Kaneria found one dead body lying near Javed Auto Garage, which was identified by Meenaben, wife of the deceased. Meenaben had lodged First Information Report before P.I. M.G. Kaneria around 15.30 hrs, which was sent by P.I.Kaneria to Mahidharpura Police Station. The said First Information Report came to be registered at CR No. I-57 of 1992 at Mahidharpura Police Station against the appellant and the absconding accused, Dilip Bambaiya. The inquest of the dead body was held by P.I. M.G. Kaneria, and the dead body was sent for autopsy to the Municipal Hospital, Surat. P.W.17, Dr. Iliyash Shaikh, Medical Officer of the New Civil Hospital, had performed autopsy of the dead body of the deceased on February 8, 1992 between 11.17 hrs. and 12.46 hrs. The clothes put on by the deceased and other sundry articles from his person were recovered under a panchanama. A few hairs which were soiled with blood were also seized from the right palm of the deceased under a separate panchanama. By drawing panchanama of scene of offence, samples of control earth and earth soiled with blood were collected. One sword which was lying near the dead body was also seized under a panchanama. The appellant was apprehended while he was taking treatment for the injuries sustained by him on the right hand thumb at the Maskati Hospital,

Surat. The physical condition of the appellant was noted under an arrest panchanama and blood-stained pant and shirt put on by the appellant were seized by drawing a panchanama. On the instruction of the Forensic Science Laboratory ('FSL' for short), few hairs from the head of the appellant were taken by drawing a panchanama. As the appellant had sustained injury on the right hand, he was again sent to Maskati Hospital by a yadi. P.I. M.G. Kaneria had, thereafter, recorded statements of the witnesses. All the incriminating articles collected during the investigation were sent to the FSL for analysis. PI. M.G. Kaneria, had collected the post-mortem report of the deceased and the injury certificate of the injuries sustained by the appellant. A yadi was sent to the Executive Magistrate to hold identification parade so as to identify the accused by the witness, Vijaybhai, driver of the Maruti Van, and other witnesses. Accordingly, a test identification parade was held by P.W.8, Executive Magistrate, I.K. Kaka. In the said identification parade, the driver of Maruti Van, Vijaybhai, had identified the appellant as the person who had launched the murderous assault with sword on the deceased. After collecting the relevant documentary evidence and on receipt of the report from the FSL, P.I. M.G. Kaneria, submitted chargesheet against the appellant and the absconding accused, Dilip Bambaiya, in the Court of the learned Judicial Magistrate, First Class, 3rd Court, Surat, for the offences under Section 302 read with Section 34 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The said chargesheet came to be registered as Criminal Case No.5024 of 1992. As the offence under Section 302 of the Indian Penal Code is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Surat, committed the case to the Court of Sessions, at Surat, for trial, where it came to be numbered as Sessions Case No.102 of 1992.

3. Charge Exh.3 was framed against the appellant for the offences punishable under Section 302 of the Indian Penal Code and in the alternative under Section 302 read with Section 34 of the Indian Penal Code. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried. In order to prove charges against the appellant, the prosecution examined the following witnesses. (1) P.W.1, Meenaben Vinodchandra Rajput, widow of deceased, Exh.6; (2) P.W.2, Vijaybhai Shyamrao Gaekwad, driver of the Maruti Van, Exh.8; (3) P.W.3, Laxmiben Saligram , Exh.9; (4) P.W.4, Kamleshkumar Chhaganlal Telwala, panch of panchanama of seizure of clothes of the appellant, Exh.11; (5) P.W.5,

Prakashbhai Shridhar, Exh.18; (6) P.W.6, Rajatkumar Shanker Patra, Exh.14; (7) P.W.7, Tarunbhai Naveenchandra Pachhigar, Exh.17; (8) P.W.8, Executive Magistrate, I.K. Kaka, who held test identification parade, Exh.19; (9) P.W.9, Rafikbhai Bapji Saiyed, Exh.24; (10) Vishrambhai Laxmanbhai Dhodiya, Exh.25; (11) P.W.11, Pir Mohmad Mehmud, Exh.26; (12) P.W.12, Gangaprasad Lalan Yadav, Exh.27, (13) P.W.13, PS, Humayubin Yasinbeg Mirza, Exh.30, (14) P.W.14, Dr. Ashwin Kinariwala, RMO, Maskati Charitable Hospital, Surat, Exh.32; (15) P.W.15, Dr. Himanshu Patel, Medical Officer, Civil Hospital, Exh.35; (16) P.W.16, Allarakha Bachumiya Shaikh, Exh.39; (17) P.W.17, Dr. Iliyash Shaikh, Medical Officer, Municipal Hospital, Surat, Exh.40; (18) P.W.18, Vasant Omkar Ahiri, Exh.42; (19) P.W.19, Police Head Constable, Urmilaben Ranchhodbhai Patel, Exh.43; (20) P.W.20, IO, PI, M.G. Kaneria, Exh.47 and (21) P.W.21, PI, A.M. Jadeja, Exh.48. The prosecution also produced documentary evidence such as First Information Report lodged by Meenaben, Exh.7, panchanama of place of incident, Exh.18, inquest panchanama Exh.28, post-mortem notes Exh.41, panchanama of test identification parade, Exh.50, map of scene of offence, report of the FSL, to prove the case against the appellant. After recording of the evidence of the prosecution witnesses was over, the appellant was questioned generally and his statement came to be recorded under Section 313 of the Code of Criminal Procedure. In the further statement, the appellant stated that he was falsely involved in the case. The appellant, however, did not examine any witness in his defence.

4. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence, and after hearing the arguments of the learned Additional Public Prosecutor and the learned counsel for the defence, deduced that the oral testimony of P.W.17, Dr. Shaikh, and the post-mortem notes, Exh.41, had proved that the deceased had died a homicidal death due to infliction of blows with swords on February 7, 1992. In the post-mortem notes Exh.41, as many as 14 external injuries were mentioned, which were sufficient in the ordinary course of nature to cause death of the deceased. The learned Additional Sessions Judge held that the oral testimony of P.W.1, Meenaben, and the evidence of P.W.2, Vijaybhai, both of whom had witnessed the incident, were trustworthy and reliable which had proved beyond doubt that both the witnesses had seen the appellant and the absconding accused, Dilip Bambaiya, giving blows with respective swords which they were carrying and inflicting injuries on various parts of the

body of the deceased which had proved fatal. The learned Additional Sessions Judge further held that other corroborative piece of evidence, in the nature of seizure of sword from the place of incident stained with the blood of the group of the deceased and the hairs which were found from the hand of the deceased soiled with blood, were matching with the hairs which were taken from the head of the appellant, had proved beyond doubt that the appellant was the person who had inflicted sword blows on the body of the deceased. The learned Additional Sessions Judge further held that the blood stains on the clothes put on by the appellant which were seized after the incident were of the group of the deceased. The learned Additional Sessions Judge further held that the appellant and the absconding accused, Dilip Bambaiya had selected vital parts of the body of the deceased for inflicting fatal blows with swords and both of them had acted cruelly and assaulted the deceased who was not armed with any weapon. It was deduced by the learned Judge that there was motive on the part of the appellant to commit murder of the deceased and the both the appellant and the deceased were dealing in illicit liquor and further that the appellant was having suspicion that the deceased was responsible for causing murder of the brother of the appellant. On the basis of the abovereferred to conclusions, the learned Additional Sessions Judge, by the impugned judgment and order, convicted the appellant under Section 302 read with Section 34 of the Indian Penal Code, and sentenced him to undergo R.I. for life and fine of Rs.5000 in default R.I. for one year, which has given rise to filing of the present appeal.

5. It may be mentioned that the case against the another accused, Dilip Bambaiya, was kept pending as he had remained absconding and, therefore, no order with regard to disposal of muddamal article was passed by the learned Additional Sessions Judge.

6. Learned advocate, Mr. Deepak M. Shah and learned Additional Public Prosecutor, Mr. S.S. Patel, have taken us through the entire record and proceedings of the appeal.

7. Learned advocate, Mr. Deepak M. Shah, for the appellant, has challenged the testimony of P.W.1, Meenaben, who is the widow of the deceased, on the ground that, even though the appellant and the absconding accused, Dilip Bambaiya, had launched the murderous assault with swords on the deceased, she had not raised shouts for help and, instead, had run away towards the

adjoining premises of Vakharia Mills and, therefore, her testimony that she was an eye-witness cannot be relied upon. In our opinion, the submission of the learned advocate for the appellant does not deserve any merit. P.W.1, Meenaben, had deposed in a most natural way and we are satisfied that her evidence is trustworthy and reliable. When they had reached Surat in Maruti Van No. GBQ 888 driven by P.W.2, Vijay, the said maruti van was parked near Gajjar Chamber, Ring Road, Surat, as the driver wanted to buy cigarette. The deceased also got down from the Maruti Van and the driver, P.W.2, Vijay, had gone to purchase cigarette. In the meantime, the appellant and the absconding accused, Dilip Bambaiya, who had previous enmity with the deceased, had rushed from the adjoining hutments and inflicted sword blows on the deceased. P.W.1, Meenaben, being a lady, was frightened and she had run towards the adjoining premises of Vakharia Mill where she had hidden herself for a couple of minutes. The appellant and the absconding accused, Dilip Bambaiya, had, thereafter, chased the deceased by wielding the swords and had inflicted the sword blows on the deceased when he had reached near the garage known as Javed Auto Garage. P.W.1, Meenaben, had instructed P.W.2, Vijay, to go to the office of the Mahemudbhai Pardewala to inform the police about the attack launched on the deceased. Accordingly, P.W.2, Vijay, had gone to the office of the Mahemudbhai Pardewala where P.W.9, Rafikbhai Bapji Saiyed was present and he had informed the police on telephone about the murderous assault launched on the deceased. The testimony of P.W.9, Rafik, corroborates the testimony of P.W.1, Meenaben and P.W.2, Vijay, that both of them had gone to the office of the Mahemudbhai Pardewala at the time of occurance of the incident. As soon as they were informed by P.W.9, Rafikbhai that the telephonic message was already sent to the police for taking necessary action, P.W.1, Meenaben, and P.W.2, Vijay, had left the office and arrived at the place of incident which was situated near Javed Auto Garage. P.W.1, Meenaben, was, searchingly, cross examined, but nothing was brought to dislodge her testimony, as deposed in the examination-in-chief. The appellant and the absconding accused, Dilip Bambaiya, were known to Meenaben since many years as her husband, deceased Pappu Vinodbhai Rajput, was connected with illegal activities of sale of liquor and the appellant and the absconding accused, Dilip Bambaiya, were also connected with the illicit business of liquor. Therefore, there was no mistaken identity with regard to the appellant and the absconding accused, Dilip Bambaiya. The learned Additional Sessions Judge was justified in placing reliance on the oral testimony of P.W.1,

Meenaben, in coming to the conclusion that her evidence was trustworthy and reliable and she had witnessed the whole incident when the appellant and the absconding accused, Dilip Bambaiya, had inflicted sword blows on various vital parts of the body of the deceased.

8. P.W.2, Vijaybhai Gaekwad, is the owner of Maruti Van No. GBQ 888. The deceased was residing in the neighbourhood of P.W.2, Vijaybhai, and he used to hire the Maruti Van of P.W.2, Vijay, on various occasions. On the day of the incident, i.e. on February 7, 1992, the deceased and Meenaben were traveling in the Maruti Van and had reached Surat city after one hour. When they were passing through Ring Road, P.W.2, Vijaybhai, stopped the Maruti Van opposite Gajjar Chamber, to purchase cigarette. The deceased had also alighted from the Maruti Van and was standing on the road. At that time, P.W.2, Vijaybhai, had seen two persons carrying swords in their hands, and launching attack and inflicting sword blows on the deceased. As per the say of P.W.2, Vijaybhai, P.W.1, Meenaben, had instructed him (P.W.2) to go to the office of the Mahemudbhai Pardewala where he told P.W.9. Rafikbhai, about the incident, who, in turn, informed the police about the attack on the deceased. The appellant and the absconding accused, Dilip Bambaiya, were not known to P.W.2, Vijay, and, therefore, to identify the appellant, a test identification parade was arranged by the P.W.8, Executive Magistrate, Mr. I.K. Kaka. P.W.8, Mr. Kaka, had taken all the precautions for holding the test identification parade and, in the test identification parade, P.W.2, Vijaybhai, had identified the appellant as the person who had launched the murderous assault on the deceased by inflicting successive sword blows. The panchanama of test identification parade is produced at Exh.23 on the record of the case. The panchanama of test identification parade at Exh.23 was duly proved by the independent witness, namely, P.W.18, Vasant Omkar Ahiri. P.W.2, Vijaybhai, had sufficient opportunity to observe the features of the appellant at the time of the assault and had, thereafter, identified the appellant in the test identification parade. Thus, the identification of the appellant as the person who had launched murderous assault on the deceased with sword was duly proved beyond doubt by P.W.2, Vijaybhai, when he identified the appellant in the test identification parade which was held on April 1, 1992. P.W.2, Vijay, was also, searchingly, cross examined at length, but, his evidence was not dislodged during the cross examination. The fact remains that P.W.1, Meenaben, and P.W.2,Vijaybhai, had witnessed the occurrence of the incident, wherein, the

appellant and the absconding accused, Dilip Bambaiya, had inflicted sword blows on the various parts of the body of the deceased which had caused the death of the deceased instantaneously. The deceased, the appellant and the absconding accused, Dilip Bambaiya, were all doing illicit business of liquor prior to the occurrence of the incident and, because of the business rivalry, they had enmity towards the deceased. Further, the appellant had a lurking suspicion that the deceased was instrumental in causing murder of the brother of the appellant. In our view, the oral testimony of P.W.1, Meenaben, as fully corroborated by oral testimony of P.W.2, Vijaybhai, has proved beyond doubt that the appellant and the absconding accused, Dilip Bambaiya, had launched murderous assault on the deceased and both of them had inflicted blows on various vital parts of the body of the deceased with the swords which they were carrying.

9. The appellant, in the above incident, had sustained injuries on his right hand thumb and had immediately taken treatment in Muskati Hospital, Surat. P.W.14, Dr. Ashwin Kinariwala, Resident Medical Officer,at Maskati Charitable Hospital, had deposed that the appellant had taken treatment in the hospital for the injuries sustained by him on the right hand thumb. The medical case papers of the appellant with regard to the treatment at the Maskati Hospital, are produced at Exh.34. It becomes evident from the said medical case papers Exh.34 that the history of the assault as narrated by the appellant was that he had sustained injury around 2 p.m. due to assault by sword. The appellant was apprehended at Maskati Hospital by P.W.20, PI, Kaneria. Thereafter, the appellant was sent to the New Civil Hospital, in a police van. The case papers of the Civil Hospital were produced at Exh.38, and, as per the case papers Exh.38, the appellant had sustained the following fracture.

"Injuries: 4 days old injected compound
fracture proxinal phalax thumb Rt. with
gangrene of distal past."

The injuries sustained by the appellant on the right thumb also lends corroboration to the case of the prosecution that the appellant, while giving successive blows with the sword on the deceased, must have sustained the fracture as the absconding accused, Dilip Bambaiya, was also inflicting sword blows on the deceased. In the scuffle which had taken place between the appellant and the deceased, the deceased had caught hold of hairs of the appellant and some hairs were found on the fingers of the deceased which were collected at the time of drawing of the panchanama of collecting clothes put on by the

deceased at the time of the incident and other articles collected from the body of the deceased. Hairs which were found in the fingers of the deceased were sent for analysis to the FSL. Hairs from the head of the appellant were also cut and collected under a panchanama and were sent to the FSL. The report of the FSL Exh.54, more particularly the serologist report, makes it abundantly clear that the hairs which were found from the fingers of the appellant and the hairs which were taken from the head of the appellant were of the same person. Thus, this piece of corroborative evidence also lends support to the prosecution case that the appellant had caused injuries by means of sword on various parts of the body of the deceased.

10. The appellant and the absconding accused, Dilip Bambaiya, had taken advantage of the situation to attack the deceased, who was unarmed, with lethal weapon like sword. Both the appellant and the absconding accused, Dilip Bambaiya, had inflicted vital blows by selecting vital parts of the body of the deceased. The appellant and the absconding accused, Dilip Bambaiya, had acted in most cruel manner. The manner in which the injuries were inflicted in various parts of the body of the ceased which had proved fatal were sufficient in the ordinary course of nature to attract the provisions of Section 300 of the Indian Penal Code. Therefore, the finding of the learned Additional Sessions Judge that the appellant had committed murder of the deceased by infliction of sword blows successively, deserves to be confirmed. Consequently, the sentence imposed upon the appellant to undergo R.I. for life and fine of Rs.5000 in default R.I. for one year, also deserves to be upheld.

11. As a result of foregoing discussion, the appeal fails and is dismissed. The conviction of the appellant under Section 302 read with Section 34 of the Indian Penal Code, and sentence imposed on him to undergo R.I. for life and fine of Rs.5000 in default R.I. for one year, recorded by the learned Additional Sessions Judge, Surat, vide the judgment and order dated March 29, 1994, in Sessions Case No. 102 of 1992, are hereby confirmed. The direction given by the learned Additional Sessions Judge, Surat, that, if the fine is paid, the same be paid to Meenaben Vinodchandra, widow of deceased Vinodchandra Alias Pappu Jaisinh Rajput, is also hereby confirmed. Since the case against the absconding accused, Dilip Bambaiya, is still pending, no orders are passed with regard to disposal of muddamal articles.

(M.H. Kadri, J.)

(Akshay H. Mehta, J.)
(swamy)